WP(C) 2713/2000
BEFORE
HON'BLE JUSTICE B.K. SHARMA

Heard Mr. S.S. Dey along with Mr. D. B. Ahmed, learned counsel for the petitioner and Mr. N. Bora, learned C.G.S.C. appearing for the respondents.

The petitioner claiming to be a Fire Wing personnel in the rank of constable under the respondents has assailed the legality and validity of the transfer and posting order dated 03.05.2000 (Annexure-9 (a)) so far as the same relates to him in the category of non opted -From Fire Wing to Security Wing .

The petitioner was first appointed as constable way back in 1989. Thereafter he was sent for Fire Wing Training which he successfully completed. The petitioner has annexed a copy of the certificate dated 09.02.91 certifying his successful completion of the Firmen's Course conducted by CISF at Deoli in Rajasthan. It is the case of the petitioner that after completion of the said course, he has been serving in the Fire Wing. According to the petitioner he had exercised his option for being absorbed in the Fire Wing which was called for in the year 1991. In paragraph-3 of the writ petition, the petitioner has made a statement that option was taken in April, 1991. The incumbents who had exercised their option to be absorbed in the Fire Wing were subsequently absorbed in the Fire Wing, but the petitioner was excluded from such absorption. Situated thus, he made representation for redressal of his grievance, but in the meantime by the impugned order dated 03.05.2000 the petitioner was included for transfer and posting in the category of non opted - From Fire Wing to Security Wing .

According to the petitioner, the respondents could not have transferred and posted him in the Security Wing categorizing him in the non-opted category. It is the further case of the petitioner that persons junior to him in the Fire Wing were absorbed in the Fire Wing and have been granted further opportunity to progress in their service career by way of promotion etc. Thus, it is the case of the petitioner that not only he has been transferred from the Fire Wing to Security Wing categorizing him as non opted , but at the same time he has also been deprived of his service benefits, which he would have otherwise earned had he been absorbed in the Fire Wing pursuant to the option exercised by him in April, 1991.

The respondents have filed their counter affidavit and have contended that there is nothing on record to show that the petitioner in fact, had exercised his option in time. According to them, had it been the fact that the petitioner had exercised his option, he would have surely produced the documentary proof of the same. In paragraph-9 of the affidavit in opposition, the respondents have stated that the petitioner made an application on 27.01.99 requesting for absorption in the CISF Fire Wing cadre and the same was forwarded to the Group Commandant, CISF, Group Headquarter, Guwahati by letter dated 31.01.99. In Annexure-7 to the writ petition which is a letter from the Assistant Commandant, CISF to the Deputy Commandant, CISF, it has been stated that the corresponding file relating to absorption in CISF Fire Wing upto the year 1992 were weeded out by the office. Since the files were weeded out, the office was unable to intimate/furnish the information relating to the option exercised by the petitioner.

In the year, 1997, the Deputy Commandant, CISF had addressed a letter to the DIG, CISF furnishing the particulars of the fire trained personnel upto the rank of Inspector. In the particulars the name of the petitioner appeared at serial No. 5 against the column whether he had exercised option in response to Force Hqrs. CISF Circular 25/90 to 31/90 . The remark given was yes . Likewise under the head Place of posting at the time of exercising option for FIR cadre , the remark given against the petitioner was CISF Unit, FACT (UDL), Udyagmandal, Keral a . Referring to this document, Mr. Dey, learned counsel for the petitioner submits that the respondents themselves having admitted that the petitioner had exercised his option, there is no escape on the part of the respondents to absorb the petitioner from the due date in reference to his juniors who in the meantime have been absorbed in the Fire Wing of the service.

Mr. N. Bora, learned C.G.S.C. countering the above argument of Mr. Dey, learned counsel for the petitioner submits that the Deputy Commandant could not have furnished information relating to purported option exercised by the petitioner. He submits that such information was furnished on the basis of the request made by the petitioner. According to him since the records were maintained in the Headquarter, the Deputy Commandant of the Unit sitting at Nagaon could not have certified that the petitioner in fact, had exercised his option.

From the materials on record and in absence of any documentary proof submitted by the petitioner, it is difficult for the writ court to arrive at a definite finding that the petitioner in fact had exercised his option during the relevant period. Mr. Dey, learned counsel for the petitioner has made an alternative submission that even now the respondents may consider the case of the petitioner for his absorption on the basis of his willingness, he has all alone expressed. He submits that since the petitioner has all along served in the Fire Wing and has undergone requisite training, there can not be any impediment toward absorption of the petitioner in the Fire Wing of the Service.

The question relating to absorption of the petitioner in the Fire Wing certainly will have a bearing in the service prospects of the petitioner. But it cannot be lost sight of the fact that the petitioner is in the disciplined force with transfer as one of the service conditions. The impugned order dated 03.05.2000 was relating to transfer and posting of the incumbents named therein which included the petitioner as well. It is one thing to show that the respondents have acted illegally in not absorbing the petitioner in the Fire Wing of the service, but it is altogether a different thing when it comes to the question of transfer of the petitioner and for that matter any Armed Force personnel. By the impugned order while categorizing the petitioner an non-opted - From the Fire Wing the petitioner was transferred to FPP Farraka. However, he is still continuing at Nagaon Paper Mill in the Morigaon District by virtue of the interim order passed on 26.05.2000. By now more than 7 years have passed and the petitioner is still continuing in the same place of posting.

In view of the above, I dispose of the writ petition with the following directions:

1) The respondents may carry out an enquiry relating to the claim of the petitioner that he had exercised his option in due time in accordance with Headquarter CISF Circular 25/90 to 31/90 from 23.11.90 to 11.07.91. Upon such inquiry if it is found that the petitioner in fact had exercised option, the respondents shall absorb him in the Fire Wing conferring him all benefits including promotion in accordance with rules at per with his juniors and applying the same yardstick and parameters.

2) Even if it is found that the petitioner had not exercised his option during the relevant period, but having regard to the fact that he has expressed his willingness for being absorbed in the Fire Wing and in fact, he has all along been serving in the Fire Wing, the respondents may also consider his absorption in the Fire Wing on that basis.

3) The respondents shall carry out the aforesaid exercise as expeditiously as possible preferably within three months from today.

In the meantime for this limited period of three months or till such time an appropriate order is passed, the petitioner many not be transferred from the Fire Wing. However, it is made clear that it will be open for the respondents to transfer him to any Fire Wing of any CISF establishment/unit in the exigencies of serving or in public interest.

Writ petition is disposed of.